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No. 93-1353

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In The  
**Supreme Court of the United States**  
October Term, 1992

THOMAS F. CONROY,

*Petitioner,*

v.

WALTER S. ANISKOFF, JR., et al.,

*Respondents.*

On Writ Of Certiorari To The  
Supreme Judicial Court Of Maine

**BRIEF FOR RESPONDENTS**

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H.C. Haynes, Inc.

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## STATEMENT

Thomas F. Conroy is a full colonel and career military officer who has been on continuous active duty with the United States Army from 1966 through the date of trial. (Pet. App. 16, 25; J.A. 4). In 1973, Col. Conroy while stationed at Ft. Devens, Massachusetts, purchased two vacant lots in the Town of Danforth, Maine. (J.A. 4, 16). The real estate consisted of unimproved parcels with no dwellings on them. (J.A. 15). The land was not used for professional, agricultural or business purposes. (J.A. 15). Subsequent to his acquisition of the property, Col. Conroy paid real estate taxes on the Danforth, Maine parcels notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe and the Far East. (J.A. 16-19). Col. Conroy last paid real estate taxes to the Town of Danforth for the year 1983. (J.A. 9). He did not pay real estate taxes for the Danforth, Maine parcels for the years 1984, 1985, and 1986. (Pet. App. 26-27). The Town of Danforth consistent with the state statutory law placed a lien upon the property for delinquent taxes. (Pet. App. 28-29). Since Col. Conroy failed to redeem the property within the eighteen (18) month period prescribed by statute, the tax lien mortgage was foreclosed. (Pet. App. 28-29). The Town of Danforth subsequently issued quitclaim deeds to respondents Walter S. Aniskoff and H.C. Haynes, Inc. on December 22, 1986. (Pet. App. 28).

In an effort to redeem his interest in the Danforth, Maine properties, Col. Conroy initiated a quiet title action and claimed that 50 U.S.C. App. § 525 (Soldiers' and Sailors' Civil Relief Act) prohibited the Town of Danforth from acquiring an interest in the property. (J.A. 1).



The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., was promulgated in part for the following purpose:

In order to provide for, strengthen, and expedite the national defense *under the emergent conditions* which are threatening the peace and security of the United States . . . provision is made to suspend enforcement of civil liabilities in certain cases . . . and to this end the following provisions are made *for the temporary suspension of legal proceedings* and transactions which may prejudice the civil rights of persons in such service.

50 U.S.C. App. § 510. (Emphasis added).

Title 50 U.S.C. App. § 525 provides in part that "the period of military service shall not be included in computing any period now or hereafter provided by any law . . . for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment." The question presented here is whether 50 U.S.C. App. § 525 absolutely protects Col. Conroy, a career serviceman, during his entire tenure in the military, from seizure and sale of his real property by the Town of Danforth as a result of his failure to pay taxes, or whether Col. Conroy must demonstrate a showing of prejudice resulting from his military service in order to come within the protection of Section 525. The Maine Superior Court determined that a demonstration of prejudice was necessary to come within the protection of Section 525. (Pet. App. 24-41). The Supreme Judicial Court of Maine affirmed by an equally divided Court. (Pet. App. 42-46).

1. Col. Conroy is a career serviceman who has been on continuous active duty in the United States Army from 1966 through date of trial. (Pet. App. 25, J.A. 4). Col. Conroy is a Maine native who owns a home in South Portland, Maine. (J.A. 4 and 7). Col. Conroy has paid taxes on his home in South Portland continuously since he purchased it in 1964. (J.A. 7, 18). Col. Conroy also owns a home in Wisconsin on which he pays real estate taxes. (J.A. 9).

2. In May 1973, Col. Conroy purchased two vacant lots of unimproved land in the town of Danforth, Maine. (J.A. 4 and 15). During the ten-year period subsequent to his acquisition of the Danforth, Maine properties he paid taxes to the Town of Danforth notwithstanding the fact that he moved from duty station to duty station throughout the United States, Europe and the Far East. (J.A. 16-19). In 1977, Col. Conroy was stationed in Korea but received his tax bill and paid it. (Pet. App. 26-27).

3. The last tax bill Col. Conroy received and paid was for the 1983 real estate taxes in Danforth. (J.A. 26). Although Col. Conroy continued to pay his real estate taxes to the City of South Portland, Col. Conroy failed to pay real estate taxes for the Danforth, Maine property for years 1984, 1985 and 1986. (J.A. 7, 19; Pet. App. 27). Col. Conroy received notice in 1987 from the Clerk of the Town of Danforth that the Danforth, Maine property had been sold for unpaid taxes. (J.A. 14).

4. During the period between August 1982 through January 1986, Col. Conroy was stationed at Fort Devens, Massachusetts. (Petitioner's Brief at 3). The trial justice specifically found that the record amply demonstrated

that the Town of Danforth sent notices to Col. Conroy at his Fort Devens address regarding tax bills for 1984, 1985, and 1986.<sup>1</sup> (Pet. App. 27-28). The trial court also found that the notices were returned to the Town as "undeliverable as addressed and unable to forward." (Pet. App. 28).

5. Since Plaintiff had not received any of his tax bills for 1984, 1985, or 1986, he testified that sometime in 1985 he forwarded correspondence to the Town of Danforth regarding these bills, but never received a reply. (Pet. App. 12). Col. Conroy subsequently moved overseas and took no further action to clarify the situation with the Town of Danforth in 1986. (Pet. App. 27).

6. The trial justice specifically found that the Town of Danforth never received notice that Col. Conroy had changed his address. (Pet. App. 28). The Town of Danforth also sent notices of tax liens and impending automatic foreclosure to Col. Conroy, but these were also returned as undeliverable. (Pet. App. 28). On or about December 22, 1986, the Town of Danforth conveyed the

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<sup>1</sup> The trial justice specifically found that the notices had been sent to Fort Devens, Massachusetts. (Pet. App. 27-28). In his brief, Petitioner takes issue with this finding. (Petitioner's Brief at 5, Footnote 5). It should be noted that Col. Conroy never challenged this finding by the trial justice and any such challenge has been waived. In addition, Petitioner cites in support of his position an affidavit which was not considered by the trial justice during the course of trial. Since the trial justice's disposition of facts was based solely on the trial testimony and not on previously submitted affidavits in an unrelated proceeding, Petitioner's challenge to the Court's factual finding is improper and unpersuasive.

property by quitclaim deed to Respondents H.C. Haynes, Inc. and Aniskoff. (Pet. App. 28).<sup>2</sup>

7. Pursuant to Maine law, a taxpayer may redeem his property by paying the delinquent taxes within 18 months, or the tax lien mortgage is automatically foreclosed. 36 M.R.S.A. § 943.

8. On November 30, 1987, Col. Conroy initiated suit in the Maine District Court against Respondents Aniskoff and the Town of Danforth. (J.A. 1). On July 15, 1988, Col. Conroy brought a quiet title action against H.C. Haynes, Inc. in the Maine Superior Court. (J.A. 1). A consolidated trial was subsequently held on September 6, 1990. The parties stipulated that:

... All the proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this particular instance, including notice and recording requirements; and that were it not for the Soldiers' and Sailors' Civil Relief Act, the Town title would have been protected in this particular instance.

9. The Superior Court rendered its opinion on November 6, 1990, (Pet. App. 24-41), dismissing all claims against Respondents. In its decision, the Superior Court discussed the various lines of cases interpreting Section 525 of the Soldiers' and Sailors' Civil Relief Act. After due consideration of the case law, the Superior Court determined that Section 525 "will toll the running of the redemption period only where the serviceman can show

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<sup>2</sup> 33 M.R.S.A. § 161 provides that "a deed of release or quitclaim deed of the usual form conveys the estate which the grantor has or can convey by deed of any other form."

hardship caused by active duty in the military." (Pet. App. 40). Having determined that Col. Conroy failed to allege or establish hardship, the Plaintiff's action was dismissed. (Pet. App. 40-41).

10. Col. Conroy subsequently appealed to the Maine Supreme Judicial Court which affirmed the Superior Court's decision by an equally divided Court on November 27, 1991. (Pet. App. 42-46). This court granted Col. Conroy's Petition for Writ of Certiorari on June 22, 1992.

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#### SUMMARY OF ARGUMENT

Fundamental rules of statutory construction require this Court to construe a statute in context. *King v. St. Vincent's Hospital*, 112 S.Ct. 570 (1991). The Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., was promulgated to allow the temporary suspension of legal proceedings for military service personnel during emergent conditions. The Act permits a temporary suspension of the statute of limitations in order to allow military personnel and the United States to maintain the national defense. The interests of military personnel, however, must be balanced with the interests of society as a whole. In order to balance those interests, the Courts have recognized that the career military serviceman must demonstrate hardship or prejudice resulting from his military service in order to allow the temporary suspension of the statute of limitations pursuant to 50 U.S.C. App. § 525. In this instance, Col. Conroy failed to allege or prove any hardship or prejudice resulting from his military service.

The Maine Court, therefore, properly concluded that the statute of limitations could not be tolled pursuant to 50 U.S.C. App. § 525.

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#### ARGUMENT

**SECTION 525 OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT REQUIRES MILITARY PERSONNEL TO DEMONSTRATE HARDSHIP OR PREJUDICE RESULTING FROM MILITARY SERVICE IN ORDER TO TOLL THE STATUTE OF LIMITATIONS FOR THE REDEMPTION OF REAL ESTATE SOLD FOR FAILURE TO PAY TAXES.**

As this Court noted recently, it is a cardinal rule of statutory construction that a statute must be read as a whole "since the meaning of the statutory language, plain or not, depends on context." *King v. St. Vincent's Hospital*, 112 S.Ct. 570, 574 (1991). The application of that rule here requires the conclusion that a career serviceman must demonstrate prejudice from his military service in order to take advantage of the protections afforded by 50 U.S.C. App. § 525. The Soldiers' and Sailors' Civil Relief Act was promulgated as a result of pressure associated with the First World War in 1918 and was constitutionally justified in order to protect soldiers from suit during war. See *Pierrard v. Hoch*, 191 P.2d 328 (Or. 1920). Title 50 U.S.C. App. § 510 states the purpose of the Act, in part, as follows:

In order to provide for, strengthen, and expedite the national defense under the *emergent conditions* which are threatening the peace and security of the United States . . . provision is made to



suspend enforcement of civil liabilities in certain cases . . . and to this end the following provisions are made for the *temporary suspension of legal proceedings* and transactions which may prejudice the civil rights of persons in such service.

(Emphasis added.) Although this Court has previously indicated that "the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call," *LeMaistre v. Leffers*, 333 U.S. 1, 6 (1946); *Boone v. Lightner*, 319 U.S. 561, 575 (1943), the statute must also be read as a whole and in context. *King v. St. Vincent's Hospital*, 112 S.Ct. 570 (1991). Several courts have had the opportunity to discuss the history and purpose of the Soldiers' and Sailors' Civil Relief Act. See e.g., *Pannell v. Continental Can Co., Inc.* 554 F.2d 216 (5th Cir. 1977); *King v. Zagorski*, 207 So.2d 61 (Fla. 1968); *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971). While the Act must be analyzed in terms of protection of the rights of those persons who have "dropped their affairs to answer their country's call," it must also be analyzed in terms of society's interest as a whole.

Many of the cases cited by the Petitioner which do not deal with real estate redemption allow the serviceman an opportunity to pursue or defend various causes of action, when his ability to pursue those claims had been hampered by his military service. In contrast, the question presented here is whether a career serviceman who has not been hampered by his military service may be protected by 50 U.S.C. App. § 525. A review of the objectives behind the Soldiers' and Sailors' Civil Relief Act as well as the case law discussing the real estate redemption

issue, compel this Court's determination that Col. Conroy should not benefit from 50 U.S.C. App. § 525 in absence of a showing of prejudice by his military service.

Col. Conroy initially joined the United States Army in 1962. (J.A. 3). He purchased his home in South Portland, Maine in 1964. (J.A. 7). In 1973, eleven years after his initial entry into the Army, Col. Conroy purchased vacant land in Danforth, Maine. (J.A. 4). Col. Conroy was aware of his obligation to pay Maine real estate taxes. (J.A. 7). Col. Conroy made no claim that he suffered prejudice as a result of his military service nor did he prove any prejudice at trial. (Pet. App. 40). Col. Conroy's payment of real estate taxes for his homes in South Portland, Maine and Wisconsin as well as his participation in the instant litigation during the pendency of his military career underscore the fact that his military service has not hampered his ability to tend to his personal affairs. As a result of Col. Conroy's failure to pay his Danforth, Maine real estate taxes in 1984, 1985 and 1986, the Town of Danforth, in compliance with Maine state law, foreclosed upon the property and sold the parcels to Respondents Aniskoff and Haynes. Respondent Haynes had no knowledge at the time he purchased the property that his predecessor in title was a serviceman. (J.A. 28). Respondents Aniskoff and Haynes were good faith purchasers for value who had no knowledge of Col. Conroy's status as a career serviceman.

A nearly identical case was presented to the Supreme Court of New Mexico in *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971). As in *Bailey*, Col. Conroy's contention distilled to its essence, is that regardless of all other factual and legal considerations, he must automatically prevail

by virtue of 50 U.S.C. App. § 525. In analyzing the relative positions of the parties, the Supreme Court of New Mexico recognized and properly disposed of the issue. The *Bailey* Court concluded that absent a showing of prejudice by the career military serviceman, a determination that 50 U.S.C. § 525 is an absolute bar would cause serious economic and practical problems in connection with real estate matters, which could not have been intended by Congress. The Court recognized that no real estate record in the county clerk's office would indicate the military status of a person whose title was otherwise extinguished by the deed to the state. The Court further recognized that a cloud on title as a result of the possibility of prior ownership by a career serviceman would have a dampening effect on land values, sales prices and the availability of credit where land is offered as security. *Bailey* at 728. These important economic and practical considerations must be recognized by this Court as well.

In *King v. Zagorski*, 207 So.2d 61 (Fla. App. 1968), the Court analyzed a case nearly identical to Col. Conroy's and concluded as follows:

We do not believe that the Civil Relief Act was designed to cover such a situation. It could hardly have been intended to completely exempt a career serviceman owning property, who is knowledgeable about his tax obligations and is in no way handicapped because of military status, from paying the usual taxes assessed on his property. . . . He made no contention that he was under any economic stress or that he was physically handicapped or that he was personally removed from the area. He made no

contention that he was in any manner whatsoever prejudiced in paying his taxes by being in the service. Basically and in layman's language, the Civil Relief Act was designed to protect from harassment and injury in connection with their civil affairs, those who usually in a state of current or impending military emergency, find themselves torn from their normal business activities back home, and, in military raiment, en route to some far off place such as Bastogna or Dak To or plain Hill 618 to do battle for their country. It was not aimed primarily as protection for the career military man; certainly it was not reasonably intended to provide a cloak of immunity to a property owner who, even though in military service, was in no way disadvantaged from the ordinary civilian in payment of his normal ad valorem taxes for the upkeep of government. We find no reported case where the Civil Relief Act has been sought to be applied to a state of facts such as exists here. . . . The conclusions irresistibly arise from a consideration of these two provisions: (1) that the Act was aimed mainly to protect the newcomer inducted into the military service, and (2) that the Act is bottomed upon the premise of 'hardship'.

*King v. Zagorski* at 64-65.

Those cases which have dealt with real estate taking outside the facts of *LeMaistre v. Leffers* (short-term soldier in war time) have attempted to balance the significant interests of the military and civilian populations with reference to stability in the conveyance of real estate. This issue is specifically addressed in the following cases and properly resolved: *King v. Zagorski*, 207 So.2d 61 (Fla.



1968) (denying a soldier redemption of property purchased sixteen (16) years earlier with no claim of ignorance or consequences under state law of non-payment of taxes); *Bailey v. Barranca*, 488 P.2d 725 (N.M. 1971) (denying retired soldier protection for failure to pay taxes on property purchased while a career soldier when he knew property was subject to tax and sale for non-payment); see also *Pannell v. Continental Can Co., Inc.*, 554 F.2d 216 (5th Cir. 1977) (career soldier of thirty-one years cannot benefit from Soldiers' and Sailors' Civil Relief Act in the absence of evidence of hardship associated with military service). These cases have all been resolved in favor of the integrity of the real estate system and the denial of special status to the military land owner simply because of his status in the military. If 50 U.S.C. App. § 525 provides an absolute bar and absolute protection to the serviceman, then title to any real estate owned by a serviceman would remain unresolved even for good faith purchasers for value who have no prior notice that the property had been taken for taxes as a result of the serviceman's non-payment.

In weighing the various policy considerations involved here, the New Mexico Supreme Court discussed the effect of an absolute bar by Section 525. The Supreme Court of New Mexico noted that:

The efforts of the legislature and the Courts to clothe tax titles with stature, security and validity have been valid for social and economic purposes. First, and most obviously, were such not the case, the State would be deprived of a significant source of revenue. Who would purchase such titles and how much would they pay were they not safe? Perhaps more important,

owners of land purchased from the State Tax Commission by themselves or their predecessors in title would fear to develop or improve such property or devote it to its highest and best economic use if such titles were not secure.

*Bailey* at 727.

The legitimate state, social and economic goals would be absolutely frustrated if a career serviceman is permitted to utilize Section 525 to protect him from the economic responsibilities he has voluntarily taken on.

While a number of courts have had the opportunity to discuss various aspects of the Soldiers' and Sailors' Civil Relief Act and its relationship to the statute of limitations, the majority of those cases deal with issues dissimilar to the one brought before this Court and do not involve issues relating to redemption of real property. For example, in *Mouradian v. John Hancock Cos.*, 930 F.2d 972 (1st Cir. 1991), a serviceman sued his former employer for wrongful termination. In *dictum*, the First Circuit merely cited a law review article that opined that the "prevailing interpretation" of the Soldiers' and Sailors' Civil Relief Act required a tolling of limitations period during any period of military service. The decision did not discuss that proposition relative to real estate redemption actions. In *Mason v. Texaco, Inc.*, 862 F.2d 242 (10th Cir. 1988), the Tenth Circuit tolled the statute of limitations during military service and allowed a products liability, personal injury and wrongful death action to be brought by a serviceman following his discharge from the service. In *Ricard v. Birch*, 529 F.2d 214 (4th Cir. 1975), the Court tolled the statute of limitations and permitted a wrongful

death action brought by survivors against military persons following their discharge. The other cases cited by Petitioner are dissimilar and have no relevance to the question here: i.e., *Ray v. Porter*, 464 F.2d 452 (6th Cir. 1972) (personal injury action resulting from motor vehicle accident brought by a military service person); *Bickford v. United States*, 56 F.2d 636 (Ct. Cl. 1981) (military back pay and allowances).

Although Petitioner relies on *LeMaistre v. Leffers*, 333 U.S. 1 (1948), for the disposition of the question presented here, this Court's analysis in *LeMaistre* demonstrates that the facts presented in that case do not support Petitioner's argument. In addition, *LeMaistre* has limited application here since the facts are distinguishable and particularly since the United States was not at war during the period between 1983 and 1987, when Col. Conroy's property was sold for unpaid taxes. This Court did not address the application of the Soldiers' and Sailors' Civil Relief Act to a career serviceman (as Col. Conroy is) in the *LeMaistre* decision. In *LeMaistre*, this Court opined that a military serviceman had the benefit of the tolling of the statute of limitations as long as he was in active military service during a time of war. This Court specifically noted that "the Act must be read with an eye friendly to those who have dropped their affairs to answer their country's call." *LeMaistre* at 6. It is clear that in *LeMaistre* this Court sought to protect the interests of the serviceman during a brief period he served during a time of war. When this Court decided *LeMaistre*, it necessarily recognized that the issues of hardship and prejudice played their part. Those factors are not present here. Col. Conroy did not "[drop][his] affairs to answer [his]

country's call," but rather chose to acquire real estate in Danforth and South Portland, Maine as well as Wisconsin during his career with the United States Army. (J.A. 3, 4, 7, 9). Col. Conroy neither claimed nor suffered any hardship as the result of his career with the military. Absent of showing of hardship or prejudice, Col. Conroy may not take advantage of the protection afforded by 50 U.S.C. App. § 525.

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## CONCLUSION

For all the foregoing reasons, the decision of the Supreme Judicial Court of Maine should be affirmed.

Respectfully submitted,

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